

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>August 11, 2014</u>
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FELIX MORET,

Petitioner,

v.

PHILIP D. HEATH,

Respondent.  
-----X

10 Civ. 6652 (KPF)

ORDER ADOPTING REPORT  
AND RECOMMENDATION

KATHERINE POLK FAILLA, District Judge:

Petitioner Felix Moret, who is proceeding *pro se*, initiated this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (the “Petition”) in 2010, challenging his state court conviction for first-degree manslaughter.<sup>1</sup> In 2011, Petitioner asked the Court to hold the Petition in abeyance while he exhausted certain other claims in state court. The Court directed Petitioner to provide additional information in response to that request; Petitioner did not respond, and has failed to respond or to update the Court for more than two years. Pending now before the Court is the unopposed Report and Recommendation of United States Magistrate Judge Debra Freeman, recommending that Petitioner’s application for a stay be denied, and the Petition be dismissed. (Dkt. #20).

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<sup>1</sup> Familiarity with the facts, which are set forth in detail in the Report and Recommendation (Dkt. #20), is assumed.

A court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). To that end, a court may accept those portions of a report to which no specific, written objection is made, as long as the factual and legal bases supporting the findings are not clearly erroneous. *See Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 513 (S.D.N.Y. 1997) (citing Fed. R. Civ. P. 72(b) and *Thomas v. Arn*, 474 U.S. 140, 149 (1985)). To the extent a petitioner makes specific objections to a magistrate judge's findings, a court must undertake a *de novo* review of the objections. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997).

Here, Petitioner has filed no objections to the Report and Recommendation. The Court finds no clear error in Magistrate Judge Freeman's recommendation, which is well-reasoned and amply justified in light of the facts and controlling law. Accordingly, the Court adopts the recommendation in full.

### **CONCLUSION**

The Report and Recommendation is ADOPTED in full. Moreover, since Petitioner has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c).

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The Clerk of Court is directed to dismiss the Petition and to mark the case as closed.

SO ORDERED.

Dated: August 11, 2014  
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

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KATHERINE POLK FAILLA  
United States District Judge

*A copy of this Order was mailed by Chambers to:*

Felix Moret  
DIN# 05-A-2930  
Great Meadow Correctional Facility  
Box 51  
Comstock, NY 12821